IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 15TH NOVEMBER 2007 / 24TH KARTHIKA 1929

WP(C).No. 18016 of 2007(T)

PETITIONER:

BENNY ANTONY, S/O.C.O.ANTONY,
RESIDING AT CHALISSERY HOUSE, P.O. MANALUR,
TRICHUR, REPRESENTED BY HIS POWER OF ATTORNEY
HOLDER, C.O. ANTONY, RESIDING AT CHALISSERY HOUSE,
P.O. MANALUR, TRICHUR.

BY ADV. SRI.MILLU DANDAPANI

RESPONDENTS:
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1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY,DEPARTMENT OF REVENUE
GOVERNMENT SECRETARIAT, TRIVANDRUM-695 001.

2. THE SPECIAL TAHSILDAR AND
LAND ACQUISITION OFFICER (LA) GENERAL, TRICHUR.

3. GRAMA PANCHAYATH,
MANALUR, TRICHUR, REPRESENTED BY ITS
SPECIAL GRADE SECRETARY.

BY ADV. SRI.PIRAPPANCODE V.SREEDHARAN NAIR
SRI.PIRAPPANCODE V.S.SUDHIR
GOVERNMENT PLEADER SHRI BASANT BALAJI R1 & 2

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/11/2007 ALONG WITH WPC NO. 22454 OF 2007 WPC NO. 23529 OF 2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P(C) NO. 18016 OF 2007

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT P1 TRUE COPY OF THE NOTIFICATION ISSUED BY THE RESPONDENT IN DESABHIMANI DAILY DATED 22.6.2004.

EXHIBIT P2 TRUE COPY OF THE JUDGMENT DATED 3.3.2006 OF A DIVISION BENCH OF THIS HONOURABLE COURT IN WA NO.1340 OF 2005.

EXHIBIT P3 TRUE COPY OF THE NOTICE NO.L.R.C-3.43142/06(1) DATED 27.4.2007 ISSUED BY THE LAND REVENUE COMMISSIONER, TRIVANDRUM TO SHRI V.N.SOMASUNDARAN.

EXHIBIT P4 PHOTOCOPY OF THE REPORT NO.C936/2003 DATED 2.9.2006 SUBMITTED BY THE SECOND RESPONDENT TO THE DISTRICT COLLECTOR, THRISSUR.

RESPONDENTS' EXHIBITS:

EXHIBIT R3(a) TRUE COPY OF THE WRITTEN STATEMENT FILED ON BEHALF OF THE PANCHYATH BEFORE THE LAND REVENUE COMMISSIONER, THIRUVANANTHAPURAM.

EXHIBIT R3(b) TRUE COPY OF ORDER NO.LRC-3.43142/06 DATED 14.6.2007.

"C.R."

K. PADMANABHAN NAIR, J.

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W.P(C) NO. 18016 OF 2007
W.P(C) NO. 22454 OF 2007
AND
W.P(C) NO. 23529 OF 2007

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Dated this the 15th day of November, 2007

J U D G M E N T

These Writ petitions are filed challenging the land acquisition proceedings. In Writ Petition No.18016 of 2007 the main relief sought for is a direction to the respondents to conduct Section 5A enquiry as contemplated under the Land Acquisition Act. In Writ Petition No.22454 of 2007 the prayer is to quash Exhibit P3 decision of the Land Revenue Commissioner by which he has overruled the objections raised by the petitioner therein. In Writ Petition No.23529 of 2007 the relief sought for is to quash Exhibit P1 notice dated 5.6.2006 and also Exhibit P5 decision of the Land Revenue Commissioner rejecting the objections filed by the petitioner therein under Section 5A of the Act.

2. The short facts necessary for the disposal of these Writ Petitions are as follows: Petitioners are owners of properties comprised in different survey numbers of Manalur

Village. The Special Tahsildar, Land Acquisition (General), Thrissur, had issued a combined notification under Section 4 (1) read with 17(4) of the Act on 15.6.2004 . Petitioner in W.P (C) No.22454 of 2007 filed W.P(C) No.20796 of 2004 to quash the said Notification. That Writ Petition was dismissed as per judgment dated 21.12.2004. Petitioner filed W.A. No.1340 of 2005 challenging that judgment. While the Writ Appeal was pending, Section 6(1) declaration was made on 10.3.2005. On 3.3.2006 the Writ Appeal was allowed in part. The urgency provision invoked in the Notification was quashed. Relevant portion of the Writ Appeal judgment reads as follows:

> "In view of the observations made above, we quash that part of the notification Exhibit P3 by virtue of which urgency provision under Section 17(4) of the Act was invoked. The appellant be permitted to raise his objections under Section 5A of the Act and the same, if filed, would be decided in accordance with law. To that extent the present Writ Appeal is partly allowed modifying the judgment of the learned Single Judge".

3. Thereafter two of the petitioners filed their objections. The Land Revenue Commissioner heard the objections and rejected the same on 14.6.2007. While the

proceedings were pending before the Land Revenue Commissioner, petitioner in W.P(C) No.18016 of 2007 approached this Court for a direction to the Land Revenue Commissioner to issue notice to him and conduct an enquiry under Section 5A of the Act alleging that he had not received any notice either from the respondents or from the Land Revenue Commissioner.

4. The main objection raised by the State is that award was already passed in these cases and hence the Writ Petitions are liable to be dismissed. Land Acquisition Officer had filed a counter affidavit in which it was stated that in pursuance to the judgment rendered by this Court in W.A. No.1340 of 2005 on 3.3.2006, he had issued a cancellation notice on 2.5.2006 partially cancelling the combined Notification without totally nullifying Section 4(1) Notification. It was further stated that land owners were allowed to file their objections, if any, under Section 5A of the Act. It was further stated that the cancellation notice was published in the newspapers and also in the locality. Thereafter Section 4 (a) notice was issued on 5.6.2006 to all interested parties

including the petitioners. It was averred that the Power of Attorney Holder of the petitioner in W.P(C) No.18016 of 2007 received notice for and on behalf of the petitioner. Other petitioners also received the notices. It was stated that the petitioners in W.P(C) Nos.22454 and 23529 of 2007 and one Arimbur Johnson filed objections. The petitioner in W.P(C) No.18016 of 2007 did not file any objection at all. Enquiry contemplated under Section 5A was conducted on 18.7.2006 by the Land Acquisition Officer with due notice to the parties and the Requisition Department. The Land Acquisition Officer submitted enquiry reports to the District Collector on 2.9.2006 and 2.3.2007. The Land Revenue Commissioner conducted enquiries in the case of petitioners in W.P(C) Nos.22454 and 23529 of 2007. But no enquiry was conducted in the case of the petitioner in W.P(C) No.18016 of 2007 since he had not filed any objection. It was further stated that the Land Revenue Commissioner as per order dated 14.6.2007 rejected all the objections raised by the petitioners and passed an award on 4.7.2007. The stand taken by the petitioners is that they have not received any notice

subsequent to the enquiry conducted under Section 5A of the Act.

5. A perusal of the file shows that after the decision of this Court in the Writ Appeal, petitioners in W.P(C) No.22454 and 23529 of 2007 and one Arimbur Johnson filed their objections. On 2.9.2006 the Land Acquisition Officer issued one report which was favourable to the petitioners. Subsequently, on 2.3.2007 he forwarded another report stating that the land notified is to be acquired.

6. A detailed valuation statement was prepared as early as on 30.10.2006 and a draft award was prepared. After preparing the detailed valuation statement, notice under Section 9(3) of the Act was issued to the petitioners except to the petitioner in W.P(C) No.18016 of 2007. They appeared before the Land Acquisition Officer on 22.1.2007. An award enquiry was conducted on that day. The persons who appeared before the Land Acquisition Officer gave oral statements before him on that day. But no award was passed.

7. The Land Revenue Commissioner conducted enquiry

under Section 5A of the Act after the disposal of Writ Appeal on 3.3.2006 and rejected the objections filed by the petitioners. Thereafter the Land Acquisition Officer followed a very strange procedure. He passed an award on the strength of the award enquiry conducted and the declaration issued in the year 2006.

8. In these cases Section 4(1) Notification was issued on 15.6.2004. Petitioner in W.P(C) No.22454 approached this Court challenging that Notification. After dismissal of the Writ Petition, Section 6 declaration was issued on 10.7.2005. Award enquiry was also conducted on 22.1.2007. After rejecting the objections raised, the Land Acquisition Officer passed a draft award on the strength of the award enquiry conducted prior to the enquiry under Section 5A of the Act. But thereafter no fresh declaration under Section 6(1) of the Act was made. No award enquiry was conducted. But an award was passed based on the award enquiry conducted prior to the conduct of enquiry under Section 5A of the Act. The procedure adopted by the Land Acquisition Officer is clearly against the mandatory provisions of the Act.

9. Section 4(1) of the Act contemplates publication of a preliminary Notification which provides that whenever it appears to the appropriate Government or to the Board of Revenue or to the Collector that land in any locality in the State of Kerala or within the jurisdiction of the Collector is needed or is likely to be needed for any public purpose or for a company, a notification to that effect shall be published. The form of notice is also prescribed. Section 5A of the Act deals with hearing of objections. It enjoins that any person interested in any land which has been notified under Section 4, sub-section (1) as being needed or likely to be needed for a public purpose or for a company may within 30 days from the date of publication of the notification object to the acquisition of the land or of any land in the locality, as the case may be. Sub-section (2) of Section 5A states the manner in which objection is to be filed and enquiry to be conducted. Section 6 of the Act deals with the declaration of the intended acquisition. Section 6 of the Act reads as follows:

> **"6. Declaration that land is required for a public purpose.- (1) Subject to the provisions of Part VII of this Act, when the appropriate**

Government or the Board of Revenue is satisfied, after considering the report, if any, made under Section 5A, sub-section (2), that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders or of the Secretary of the Board of Revenue, as the case may be and different declarations may be made from time to time in respect of different parcels of any land covered by the same notifications under Section 4, sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) under Section 5A, sub-section (2);

(emphasis supplied)

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(2) Every declaration shall be published in the Official Gazette and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality the last of the dates of such publication and the giving of such public notice being hereinafter referred to as the date of the publication of the declaration and such declaration shall state the district or other territorial in which the land is situate, the purpose for which it is needed, its approximate area and where a plan shall have been

made of the land the place where such plan may be inspected".

10. A reading of Section 6 of the Act makes it abundantly clear that the declaration under Section 6 can be issued only after conducting enquiry under Section 5A of the Act. It is trite law that the right given to a citizen under Section 5A of the Act is not an empty formality but a valuable right. The Division Bench of this Court had taken note of that fact and quashed the urgency provision, Section 17(4), from the Notification. When Section 17(4) was quashed, the Land Acquisition Officer had no other option, but to conduct enquiry under Section 5A of the Act and thereafter issue a fresh declaration under Section 6(1) of the Act. In these cases Section 6 declaration and award enquiry were already conducted, prior to the conduct of Section 5A enquiry. After repelling the objections raised by the petitioners straight away the award was passed. So it is clear that the intention of the respondents was only to create documents to the effect that they had complied with the order of the Division Bench. It is evidently clear that the authorities approached the matter with prejudicial mind. When enquiry under Section 5A of the

Act is conducted, there are two possible results. The competent authority may accept the objection and set aside the Notification or exclude the land of the objector. The authority may reject the objection and in such case they shall issue declaration under Section 6(1) of the Act. Section 6(1) of the Act enjoins that the declaration shall be made only after conducting Section 5A enquiry. Conduct of Section 5A enquiry after declaration and award enquiry is an empty formality and that cannot be considered as compliance of the statutory provisions. Section 6 declaration is to be made within one year from the date of publication of the Notification. It is submitted that in case it is held that the Land Acquisition Officer is not entitled to pass an award based on the declaration already made and award enquiry conducted, the entire land acquisition proceedings will lapse. There is no provision in the Act to enlarge the time limit fixed under the Statute. In view of the facts and circumstances stated above, Section 4(1) Notification is also to be quashed as the time limit for issuing Section 6 declaration and passing of award have already lapsed.

In the result, the Writ Petitions are allowed. The Section 4(1) Notification dated 22.6.2004, marked as Exhibit P1 in W.P (C) No.18016 of 2007, and all further proceedings in pursuance to that Notification are quashed. It is made clear that this judgment will not be a bar for the Acquisition or Requisitioning authorities to proceed with further land acquisition in accordance with law, if so advised.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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W.P(C) NO.18016 OF 2007,
W.P(C) NO.22454 OF 2007
AND
W.P.(C) NO.23529 OF 2007

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J U D G M E N T

15TH NOVEMBER, 2007